IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL CASE No 4 of 1998

in

COMPANY PETITIONNo 97 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

O.L. OF ESSEN COMPUTERS LTD.

Versus

RAJENDRA A. SHAH

Appearance:

OFFICIAL LIQUIDATOR for Petitioner

MR SN SOPARKAR for Respondent No. 1

DELETED for Respondent No. 3

NOTICE UNSERVED for Respondent No. 4

NOTICE SERVED for Respondent No. 5

MR MRUGESH JANI for Respondent No. 6

MRS SWATI SOPARKAR for Respondent No. 9

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 05/05/2000

C.A.V.JUDGEMENT

1. In this case, a criminal complaint has been filed under Sec. 454(5) of the Companies Act, i.e. If any person, failed to comply with any of the requirement of this Section i.e. filing of the statement of the affairs made to the official liquidator, he shall be punished with imprisonment or he is liable to pay penalty which may extend to Rs.100/- for every day during which default continued or that both.

2. In this case, official liquidator ha stated that this Court by its order dtd. 17/4/1997 passed winding up order for winding up M/s. Essen Computers Ltd. (in Liqn.).

3. It was stated that accused No.1 to 9 were Directors of the Company at the relevant time and they failed to file statements of affairs. Official Liquidator has filed report dtd. 17/12/1998.

4. When the matter reached hearing before me, I have heard official liquidator and Mr. S.N. Soparkar, learned advocate appearing on behalf of the respondent NO.1 who has stated that since the present act of omission is concerned respondent No.9 was responsible for the same.

5. In this matter, the relevant section is as under;

Sec.454 Statement of affairs to be made to Official Liquidator.- (1) Whether the Court has made a winding up order or appointed the Official Liquidator as provisional liquidator, unless the Court in its discretion otherwise order, there shall be made out and submitted to the Official Liquidator a statement as to the affairs of the company in the prescribed form, verified by an affidavit, and containing the following particulars, namely;-

(a) the assets of the company, stating separately the cash balance in hand and at the bank, if any, and the negotiable securities, It any, held by the company;

(b) its debts and liabilities;

(c) the means, residence and occupations of its creditors, stating separately the amount of secured and unsecured debts; and in the case of secured debts, particulars of the securities given whether by the company or an officer thereof, their value and the dates on which they were given;

(d) the debts due to the company and the names, residence and occupation of the persons from whom they are due and the amount likely to be realised on account thereof;

(e) such further or other information as may be prescribed, or as the Official Liquidator; may require.

(2) The statement shall be submitted and verified by one or ore of the persons who are at the relevant date the directors and by the person who is at the date of the manager, secretary or other chief officer of the company, or by such of the persons hereinafter in this sub-section mentioned, as the official liquidator, subject to the direction of the Court, may required to submit and verify the statement, that is to say, persons-

(a) who are or have been officers of he company;

(b) who have been taken part in the formation of the company at any time within one year before the relevant date;

(c) who are in the employment of the company, or have been in the employment of the company within the said year, and are, in the opinion of the official liquidator, capable to giving the information required;

(d) who are or have been within the said year officers of, or in the employment of, a company which is, or within the said year was an officer of the company to which the statement relates.

(3) The statement shall be submitted within twenty one days from the relevant date, or within such extended time not exceeding three months from that date as the official liquidator or the Court may, for special reasons, appoint.

(4) Any person making, or concurring in making, the statement and affidavit required by this section shall be allowed, and shall be paid by the official liquidator or provisional liquidator, as the case may be out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official liquidator may consider reasonable, subject to an appeal to the Court.

(5) If any person, without reasonable excuse, makes default in complying with any of the requirements of this section, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one hundred rupees for every day during which the default continues, or with both.

(5-A) The Court by which the winding up order is made or the provisional liquidator is appointed, may take cognizance of an offence under sub-section (5) upon receiving a complaint of facts constituting such an offence and trying the offence itself in accordance with the procedure laid down in the Code of Criminal Procedure, 1998 (5 of 1998) for the trial of summons cases by magistrates.

(6) ....

(7) ....

(8) ....

(9) ....

6. I have considered the above Sections as well as the submissions made by the learned advocate on behalf of the accused NO.9 and also the submissions made by the official liquidator in this behalf.

7. In this case winding up order has been passed on 17/4/97. As per the provisions of the Companies Act, Statement of Affairs requires to be filed on or before 8th May, 1997 (within 21 days of winding up order). The

official liquidator issued notice for filing Statement of Claim on 28th October, 1997, thereafter, the present complaint was filed by the complainant on 17/12/98. It was submitted by the learned counsel for the accused No.9 that accused No.9 is responsible for filing the Statement of Claim. He has filed statement of affairs on 13th April, 2000.

8. It was stated that accused NO.1 is a solicitor advocate, deft. No.2 is Chartered Accountant and the Accused Nos.1 and 2 are deleted vide order dtd. 27/1/2000. Shri R.M. Desai, appearing for the accused NO.3. Accused No.5 and 6 are served, accused Nos. 4, 7 and 8 are unserved, however, they are not necessary to serve because they are not responsible, they are only nominal Directors.

9. Mr. S.N. Soparkar, learned advocate on behalf of the respondent No.9 has stated that only accused No.9 is responsible for punishment, provided under the Act. As per the provisions of the said Act, the said accused is liable for imprisonment for a term which may extend to two years, or with fine which may extend to one hundred rupees for every day during which the default continues, or with both. In this case, the default has continued right from 8/5/97 till 13/4/2000 for which there will be very huge fine, however, accused No.9 has stated that as the record of the company was not available and the inspection thereof took substantial time for preparation of the statements of affair, the same could not be filed in time, as provided under the Act. It is further stated that the Banks have also not provided Accounts in time and therefore, also there was a delay in filing the statement of affairs.

10. I have considered the provisions of the Act, submissions made by the learned advocate in this behalf as well as submissions of learned liquidator also, I am, satisfied that accused No.9 has given cogent and convincing reasons which constitute reasonable excuse as contemplated under the provisions of the Act, therefore, in the interest of justice, instead of fine of more than Rs.1 lac (Rupees One lac) (as per the provisions of the Act), I reduce the the fine to Rs.10,000/-, (Rupees Ten Thousand) only on the accused NO.9, and accordingly accused N0.9 is directed to deposit the penalty before the Registry of this Court within 15th June, 2000. The other accused who are on the record are discharged so far the filing of the Statement of Affairs is concerned. The other accused who are already deleted,

this order will not affect them.

11. In view of the above, the criminal case is disposed of accordingly.

(K.M. MEHTA, J.)

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